IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION No.7506 OF 2006.

Mohd. Ibrahim Mohd.Husain. ..Petitioner.

Vs.

Rafique Ahmed M.Ali
and Others. ..Respondents.

Mr. Anilkumar Patil, Advocate for Petitioner.

Mr. N.R. Bubna, Advocate for Respondent.

CORAM:R.M.S.KHANDEPARKAR,J.
DATED:17TH NOVEMBER, 2006.

P.C.:-

1. The petitioner challenges the order in R.C.A. No.41 of 2005 passed by the first Appellate Court rejecting the application for amendment to the written statement. First of all, the application was filed at the stage of the Appeal. Being so, it is not, as a matter of course, that such an application can be allowed bearing in mind the provisions of law comprised under Order VI Rule 17 of C.P.C. Secondly, by the proposed amendment, the petitioner was seeking to raise a plea of denial of his status as "tenant".Though in the application for amendment it was stated that such plea was sought to be raised by way of an alternative plea and without prejudice to

other contentions in the written statement. The impugned order apparently discloses that the petitioner in his written statement and in the course of trial before the trial Court had fairly admitted his status as regards the payment of standard rent, etc. Being so, the status of tenancy being admitted, the plea, which is now sought to be raised, of denial of status of tenancy, it cannot be said to be an alternative plea. But it is in fact, a contrary plea to the one which was raised in the written statement. Bearing in mind the provisions of Order VI Rule 17 of C.P.C. such type of application was filed, no fault can be found with the impugned order dismissing such an application.

2. The lower Appellate Court has dealt with all the points which were sought to be raised and canvassed in support of the application for amendment to the pleadings and has rejected the said contention. The lower Appellate Court has exercised its discretion judiciously and the impugned order does not disclose any jurisdictional error thereunder. No case is made out for interference in

exercise of writ jurisdiction under Article 227 of the Constitution. The petition, therefore, is rejected.

[R.M.S.KHANDEPARKAR,J]